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THE HIGH COURT OF DELHI AT NEW DELHI

CRIMINAL APPEAL 100/2006

Judgment delivered on:16.05.2006

STATE ...Petitioner

- versus -

VIRESHWAR TYAGI & ORS. ...Respondents

Advocates who appeared in this case:
For the Appellant : Ms Richa Kapur
For the Respondent : Mr M.L. Yadav

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in Digest?

BADAR DURREZ AHMED, J (ORAL)

1. Delay condoned.

2. The State has preferred this appeal against the judgment dated 22.9.2005 and the order of sentence of the same date passed by the Additional Sessions Judge in his capacity as the Special Judge (Narcotic Drugs and Psychotropic Substances Act, 1985). The learned Additional Sessions Judge relying upon the decision of this Court in the Dule Hassan v State, which was decided on 2.9.2005, concluded as under:-

> "24. In the present case, 600 gram Heroin was recovered from accused Vireshwar Tyagi, 200 grams Heroin was recovered from

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accused Jitender and 200 grams Heroin was recovered from accused Yogesh Tyagi and a sample mark A (from the recovery of accused Jitender) Sample mark D (from the recovery of accused Yogesh) and sample mark G (from the recovery of accused Vireshwar) were got analyzed from FSL and FSL report Ex. PW11/E was obtained wherein the presence of diacetylmorphine in the said parcels was found to be 1.12%, 1.2% and 1.24% respectively. The actual weight by percentage from the recovery of the Heroin from the above said three accused persons is as under:

(1) **Vireshwar Tyagi**

600 grams x 1.24%/100 = 7.44 grams Heroin

(2) **Jitender Tyagi**

200 grams x 1.2%/100 = 2.40grams Heroin

(3) **Yogesh Tyagi**

200 grams x 1.12/100 = 2.24 grams Heroin

Grand Total **12.08 grams Heroin**

25. Thus, the actual weight of the contents/contraband has translated to 12.08 grams Heroin (diacetylmorphine) which is an intermediate quantity as specified under the NDPS Act and the offence is covered u/s 21(b) of the NDPS Act. All the above three accused persons were charged for the offences u/s 21/29 NDPS Act and the fourth accused Mukesh Tyagi was charged u/s 25 of the NDPS Act for allowing his motorcycle by the said three accused persons for carrying the Heroin. As already stated above, all the four accused persons have admitted their guilt voluntarily and without any pressure or coercion.

26. In the light of the above discussion and for the reasons given therein, I am of the considered view that the prosecution has proved its case u/s 21(b)/29 of the NDPS Act against the accused Vreshwar Tyagi, Jitender Tyagi and Yogesh Tyagi and the prosecution has also proved its case u/s 25 of the NDPS Act against accused Mukesh Tyagi. Accordingly, the accused persons are held guilty and convicted."

3. The learned counsel for the State (Appellant) submitted that the

appellant ought to have been convicted under Section 21 (c) of the NDPS Act because the convicts were found to be jointly in possession of 1 Kg. of substances which were said to contain Heroin. This issue now stands settled by virtue of the decision in the case of ***Ansar Ahmed and Another v. The State***: ***123 (2005) DLT 563,*** wherein it was held that in a mixture of a narcotic drug or a psychotropic substance with one or more neutral substances, the quantity of the neutral substance or substances is not to be taken while considering whether a small quantity or a commercial quantity of the narcotic drug or psychotropic substance is recovered but only the actual content by weight of the narcotic drug or the psychotropic substance (as the case may be) is relevant for determining whether it would constitute a "small quantity" or a "commercial quantity".

4. In view of this decision, the impugned judgment cannot be altered. Accordingly, the appeal is dismissed.

BADAR DURREZ AHMED
(JUDGE)

May 16, 2006
j